



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Timothy X. Gibson, Esq.
Mathews, Collins, Shepherd & Gould P.A.
Suite 306
100 Thanet Circle
Princeton, NJ 08540

COPY MAILED

AUG 24 2004

In re Application of : **OFFICE OF PETITIONS**
Harchekar, et al. :
Filed: April 12, 2004 : ON PETITION
Application No. 10/823,423 :
Atty. Dkt. No.: 4752-105.1 US :
:

This decision in response to the "PETITION TO REINSTATE FILING DATE," filed July 12, 2004, requesting that the above-identified application be accorded a filing date of April 12, 2004.

The application was submitted April 12, 2004. The Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice") on June 25, 2004. The Notice indicated that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 USC 113 (first sentence).

The Notice indicated the filing date of the application would be date of receipt of the omitted items. Any assertion that the omitted items were in fact submitted or are not necessary for a filing date must be by way of petition.

Petitioners argue that drawings are not necessary for an understanding of the subject matter sought to be patented. Petitioners also indicate that the drawings are part of co-pending application no. 10/051,877 filed October 25, 2001, the entire disclosure of which was fully incorporated by reference into the present application.

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence).

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a

filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors. Should the Technology Center determine that drawings are necessary under 35 U.S.C. 113 (first sentence) the filing date issue will be reconsidered by the USPTO.

A review of the official file reveals that the instant application includes at least one process claim. As it is USPTO practice to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary, the Notice of Incomplete Application mailed June 25, 2004 was mailed in error and is hereby withdrawn.

Accordingly, the petition to accord the application a filing date of April 12, 2004 is GRANTED.

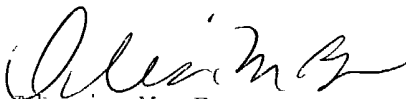
The application will be processed with only the papers present on filing with a filing date of April 12, 2004, without drawings as part of the original disclosure.

No fee is due in connection with this matter. A refund from the Finance Office, Refund Section has been requested on petitioners' behalf.

Receipt is acknowledged of the second preliminary amendment submitted herewith seeking to amend the application to include Fig. 1-8. Petitioners can expect the preliminary amendment to be examined in due course by the examiner of record.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 12, 2004.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



Alesia M. Brown
Senior Petitions Attorney
Office of Petitions